

# CERTIFICATE OF LAND USE RIGHTS AS LEGAL CERTAINTY IN SUPPORTING INVESTMENT ACTIVITIES

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## Abstract

Land is a very needed and strategic need because it involves the needs of many humans which are very fundamental. In addition, the soil is multidimensional, multisectoral, multiplane, and very complex. In investing activities, one important thing to note is related to land rights certificates. The method used in this study is a literature review that uses normative methods by analyzing legislation and some literature related to the topic of land certification. There are several grants of land title certificate status for investment actors. Among them are CR, BR, and UR. The transfer and renewal of land use rights that are handed over immediately in advance and can be renewed can be terminated or revoked by the government if the investment party abandons the land.

**Keywords:** Land, Investment, Land Rights.

## 1. INTRODUCTION

Land is a very needed and strategic need because it involves the fundamental needs of many humans (Efrimol, 2011). As understood, land problems are problems that involve many interests, be it economic, political, social, or even land that has religious values of a cultural nature that cannot be measured economically. The nature of the soil is constant, and the number of humans continues to increase, so the need for land is getting higher, which results in the value of land continuing to increase.

Land is also an important resource in today's society. The explosion of the human population makes humans need land for shelter as well as shelter (Permana & Sudarsana, 2019). Paying attention to human needs for important land, a title/certificate is needed as a legal tool of land ownership. To minimize disputes resulting from land use that often cause disputes such as land acquisition, land tenure status, and others need serious attention from court cases. Rural people's understanding of land can involve emotional and psychological factors, as land often has rich historical, cultural, and symbolic significance (Chigbu, 2013).

Neoliberal economists have advocated the formalization of land tenure rights to be fundamental in improving tenure security, which in turn can contribute to land investment and participation in the land rental market (Qian et al., 2022). The lack of consensus on how land tenure guarantees should be defined and measured may be an essential reason (Arnot et al., 2011). Neo-liberal and neo-classical school principles of property rights state that institutional structures are essential to economic activity, and privatized ownership is the most efficient and secure institutional arrangement (North, 1990).

Following the property rights approach, a number of studies define tenure certainty according to the substance of the right and measure it with *de jure* indicators of land tenure (e.g., legal ownership of land) (Nguyen et al., 2016). Nevertheless, critics argue that equating land title ownership with land ownership does not mean land ownership

is insecure in practice on the one hand (Van Gelder, 2010). That land, on the contrary, tenure rights can lead to conflict-ridden and incredible tenure arrangements (Krul et al., 2021).

In the Industrial Revolution 4.0 (four zeros), the state as a strong organization must have a purpose. Similar to the Indonesian state, the purpose stated in the 1945 Constitution is that the State of Indonesia applies the concept of state welfare. As a nation oriented towards the common good, all goodness must not only lead to the ideals to be achieved but also to the laws that are currently used as operational rules of the state, government, and society. One of them is about investment. In the world of investment, applicable law must be able to be used as a guarantee of certainty and predictability (everything that is the same must be decided together) and can be calculated (every financial decision must be calculated) (Widiadnyani, 2023). All of this is related to the investment plan, which must be able to be conveyed to opportunities in the future.

Capital owners will be less interested in investing in Indonesia, domestically (PMDN), or abroad (PMA) if the obstacles caused by the three factors described above cannot be a real guarantee to the government. Facilities, infrastructure used, CR, BR, and UR with a certain period, each of which the period can be extended depending on laws and regulations; if the three factors above, especially legal certainty, compliance is not guaranteed and tends to hamper the attractiveness of private investment. On the other hand, investors' obligations to environmental development, such as providing housing for local community workers, are one of the efforts used to align the interests of investors with related local communities. Existing rules must be able to protect these disparate interests until they are in harmony. Investors as investors (capital owners) not only pursue profits for the benefit of the people like the old capitalism but must be able to become mainstream capitalism and promote equity and a prosperous society.

As a central element in the formation of a country, the status of land has an important role in sustaining the course of life of a nation. In a country that aspires to social justice in a democracy, the use of land for the welfare of society is an absolute requirement. In its consideration, the Basic Law on Agriculture Number 5 of 1960 (BLA) affirms that national agricultural law must provide opportunities to fulfill the functions of land, water, and space in accordance with the interests of the land in accordance with the interests of the Indonesian people and the development of the times and is a manifestation of the hope of the One and Only God, Humanity, Nationality, Peoplehood, and Social Justice. This is also reinforced by Article 6 of the BLA, which states that all land rights have a social function. However, the reality is far from what BLA thinks. Various land disputes often arise.

To put the interests of the people first, in the end, it must be eroded by investment and business interests that benefit a few groups is a mandate of the law so that the interests of all people, which should be the top priority, are ignored. Some land conflicts arise not only because of the flow of urbanization but also because of large-scale infrastructure projects, land policies (such as the eviction of the urban poor from cities), the strategic location of land to build commercial projects) often end in the eviction of people with low incomes out of the city. In addition to the land use controversy between the interests of capital owners on the one hand and the social interests of the community in general on the other hand, the role of government and management institutions in regulating the allocation of land use. for investment

purposes is huge. On the one hand, it provides legal certainty to investors; on the other hand, it is environmentally sound and guarantees the greatest prosperity for the people. Therefore, special attention should be paid to the implementation of studies on the legal certainty of land use in investment and land use in environmentally sound investments for prosperity. Based on the explanation above, the purpose of writing this article is to explain the certificate of ownership of land as a legal force in supporting investment activities.

## 2. LITERATURE REVIEW

Individuals and legal entities must be able to show ownership of the land status certificate used. Various kinds of evidentiary media can be used as material to prove land rights. However, the land use rights certificate is the strongest evidence of ownership of land cave matters as mentioned in Article 19 of the BLA, paragraph-2 letter c, namely the certification of land use rights owned as certain evidentiary materials. The data contained in a valid certificate is considered accurate as long as it cannot be proven otherwise. Other evidentiary materials can be in the form of letters/certificates or non-certificates. In order to obtain land use rights, the area must be registered with the land government (Permana & Sudarsana, 2019).

In investing activities, one of the things that need to be considered is the issue of land rights certificates. Investment is English, which is made as the initial language of investment, meaning the word basic investment, which means processing (Antonio, 2007). Investment/investment is real estate or property owned by individuals or corporate organizations with the aim of getting recurring income or profits from sales. It is usually controlled for a relatively long period (Rahmawan, 2005).

## 3. RESEARCH METHOD

The method used in the preparation of this article is a literature study that uses normative methods by analyzing legislation and some literature related to the topic of land certification.

## 4. RESULT AND DISCUSSION

The perception of tenure security is increasingly seen as the closest proxy of tetnorial certainty (Ma et al., 2015). Given this subjectivity, perceived tenure certainty may be a rather complex concept that blends common expectations of eviction and fear of future conflict from the perspective of landowners (Broegaard, 2005).

However, most empirical studies only use landowners' subjective estimates of the likelihood of future land eviction in some cases and land relocation in others to conceptualize perceived land tenure guarantees (Ghebru & Lambrecht, 2017).

Two legal certainties can be understood: first, the existence of general regulations by which individuals understand what actions are allowed or cannot be done, and second, in the form of legal certainty against individuals against the arbitrariness of the state or government because of general regulations by which individuals can know what can be imposed or enforced by the state on individuals (Widiadnyani, 2023). Widiadnyani (2023) also explained that from the definition of legal certainty in the area, there are three definitions of legal certainty: 1) certainty of legal regulations that regulate an abstract government issue; 2) certainty of the legal position of legal entities

and entities in the implementation of government regulations; 3) Prevent arbitrary actions from anyone, including the government.

Permana and Sudarsana (2019) explain that the ownership of land rights by individuals or legal entities must be proven. There are several kinds of evidence to be used as a means of proving ownership of land.

However, the strongest evidentiary tool for ownership of land rights is certificates. This right is explained in Article 19, paragraph (2) hours c of the BLA that is; certificates are used as strong evidentiary materials, namely juridical data and physical data contained in the form of certificates are considered correct, as long as no counter-proof uses certificates or evidence other than certificates. Land registration at the Land Office is a step to obtain a land certificate.

Since the mid-1980s, land arrangements have been carried out. The handover of building permits and permits based on the Nuisance Law to investment companies is further regulated in Permendagri No. 12 of 1984 concerning procedures for granting land and land use rights. With this regulation, PMA and PMDN can acquire land. Since the early 1980s, there has been a shift in industry from developed to developing countries. Resettlement is understood in addition to seeking abundant natural resources, cheap labor, a conducive political environment, and ease of land provision.

The IL was issued on April 26, 2007, to conform to the development of the era where the previous regulation was Law No. 1 of 1967, Foreign Investment Law No. 11 of 1970 (from now on referred to as "ILA"), and Law No. 6 of 1968; The Domestic Investment Law No. 12 of 1970 (from now on referred to as the "ILDN"), is considered obsolete. In the IL, all forms of investment activities by both domestic and foreign investors to conduct business activities in Indonesia are meant by investment.

The IL rules apply to the investment process in all sectors in Indonesia, with direct participation, and do not include indirect or portfolio participation as a limiting provision as referred to in Article 2 of the Law and its construction. Investment policy aims to create a conducive investment ecosystem, encourage and guarantee firm, fair, and effective legality, and prioritize the interests of the national economy by:

1. Increase the competitiveness of the national economy by encouraging the creation of a conducive national business climate for investment;
2. Accelerate investment growth. Money or other non-monetary forms owned by an investor that have economic value are used as capital. The ease of service and licensing for investment companies to obtain land use rights as the desired business climate.

Service and investment facility permits are granted by the Government, provincial government, or district/city government after fulfilling physical and legal requirements beginning with the issuance of a location permit (PMN/BKPN No. 2 of 1999 combined with Presidential Decree). Presidential Decree No. 34 of 2003 and Presidential Regulation No. 38 of 2007 concerning the division of government affairs between the government, provincial governments, and district/city governments (article 6, among others, related to land and investment services).

Article 22 of the Investment Law No. 25 of 2007 (IL) stipulates that investors have the right to use land use rights in Indonesian territory. Land rights that investors can use for investment activities are: 1) Cultivation Rights (CR), 2) Building Rights (BR), and

3) Use Right (UR). The terms of land use rights according to the IL are CR 90 years (60+30 years), BR 80 years (50+30 years), and UR 70 years (45+25 years). This is contrary to BLA regulations and digital government regulations. 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights (Government Regulation No. 40 of 1996). In addition, the time limit provisions in the IL can be reviewed by the Constitutional Court with Decision Number 33/PUU. X/2011 canceled the provisions of Article 22 of the Law on the grounds that it contradicted the provisions of Article 22 of the Law with the provisions of Article 22 of the Law. Legal provisions in accordance with the meaning of Article 33 of the State Constitution of the Republic of Indonesia Year 1945, as well as within the period of CR, BR UR, BLA, and PP No. 40 of 1996.

Pakpahan (2023) explained that the right to control land granted by the state to individuals, community groups, and business entities, both Indonesian citizens and foreigners, is the law of the land. The right to use land or use one's land is given to the holder of the right to use the land. The determination of land rights that can be owned and granted to individuals and legal entities that meet certain requirements rests entirely with the state.

This authority is regulated in Article 4(1) of the Basic Law on Land Settlements No. 5 of 1960 (from now on referred to as the BLA), which stipulates that: "On the basis of the right to control from the State as referred to in article 2 it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by persons either alone or jointly with other persons and legal entities."

Article 16, paragraph (1) of the BLA, which regulates the various powers over land, explains that Land rights, as referred to in paragraph (1) article 4, are:

1. power of ownership,
2. Right of Use,
3. building-use rights,
4. right of use,
5. leasehold,
6. right to open land,
7. the right to collect forest products,

Power over land gives control over land by the government to individuals or organizations in the form of free land ownership rights. This refers to, based on these provisions, the right to use the results (from now on referred to as CR), the right to use the court, etc. houses (from now on referred to as BR), the right to use the results, the right to rent., the right to open land, the right to collect proceeds, as well as some temporary rights such as mortgage rights, the right to participate in profit-seeking, the right to live and the right to rent agricultural land.

There is a time limit for CR as specified in Article 29 of the BLA, which states that:

1. 25 years is the period given for the benefit of CR.
2. A maximum period of 35 years is required for business actors who need a longer time.
3. As referred to in paragraph (1) and paragraph (2) of this article, it may be extended no later than 25 years at the request of the power owner and taking into account social conditions.

Therefore, the Right to Cultivate is used for a set period of 35 years and can be extended for another 25 years, with a permitted land area of at least 5 hectares and a maximum of 25 hectares for farmland, freshwater, and livestock cultivation. In addition to CR, foreigners who establish legal entities according to Indonesian law can also receive BR on the basis of Article 36 paragraph (1) of BLA, which explains that: "The persons who may have the right to use the building are:

1. Indonesian citizen;
2. a legal entity established under Indonesian law and headquartered in Indonesia."

"The power to own and build works on land that is not owned is called BR, for a maximum set time of 30 years. After 30 years, BR can be extended for 20 years. This is in accordance with Article 35, paragraph (2) of the BLA, with the following conditions (Pakpahan, 2023).

## 5. CONCLUSION

Pemberian status sertifikat hak atas tanah bagi pelaku Investasi ada beberapa. Diantaranya adalah CR, BR, dan UR. Penyerahan serta pembaharuan hak guna tanah yang difasilitasi segera di muka dan dapat diperbaharui maupun dicabut atau dibatalkan oleh pemangku kebijakan yakni pemerintah jika perusahaan pelaku investasi menelantarkan tanah tersebut, sehingga dapat menimbulkan kerugian bagi kepentingan khalayak umum, penggunaan atau pemanfaatan tanah yang tidak sesuai antara fungsi dengan maksud dan tujuannya.

## References

- 1) Antonio, M. S. (2007). *Muhammad SAW: The Super Leader Super Manager*. ProLM Centre & Tazkia Multimedia.
- 2) Arnot, C. D., Boxall, M. K. L., & C., P. (2011). What Is Tenure Security? Conceptual Implications for Empirical Analysis. *Land Economics*, 87(2), 297–311. <https://doi.org/https://doi.org/10.3368/le.87.2.297>
- 3) Broegaard, R. J. (2005). Land tenure insecurity and inequality in Nicaragua. *Dev. Change*, 36(5), 845–864.
- 4) Chigbu, U. E. (2013). Fostering a rural sense of place: the missing piece in Uturu, Nigeria. *Dev. Pract*, 23(2), 264–277.
- 5) Efrimol, E. (2011). Kebijakan pemerintah tentang pengaturan mengenai pertanahan dalam penanaman modal dan investasi di Indonesia. *Inovatif: Jurnal Ilmu Hukum*, 4(5), 37–51.
- 6) Ghebru, H., & Lambrecht, I. (2017). Drivers of perceived land tenure (in)security: Empirical evidence from Ghana. *Land Use Policy*, 66(July 2016), 293–303. <https://doi.org/10.1016/j.landusepol.2017.04.042>

- 7) Krul, K., Ho, P., & Yang, X. (2021). Land titling as a conflict remedy or driver? Analyzing institutional outcomes through latent and manifest conflicts in China's forest sector. *Land Use Policy*, 100, 104880.
- 8) Ma, X., Heerink, N., Feng, S., & Shi, X. (2015). Farmland tenure in China: Comparing legal, actual and perceived security. *Land Use Policy*, pp. 42, 293–306. <https://doi.org/10.1016/j.landusepol.2014.07.020>
- 9) Nguyen, T., Bauer, S., & Grote, U. (2016). Does land tenure security promote manure use by farm households in Vietnam? *Sustainability*, 8(2), 178.
- 10) North, D. C. (1990). *North, D.C., 1990. Institutions, Institutional Change and Economic Performance.*
- 11) Pakpahan, D. M. (2023). Kepemilikan Tanah Bagi Warga Negara Asing Atas Tanah di Indonesia. *Kementrian Keuangan Republik Indonesia*. <https://www.djkn.kemenkeu.go.id/artikel/baca/15842/Kepemilikan-Tanah-Bagi-Warga-Negara-Asing-Atas-Tanah-di-Indonesia.html>
- 12) Permana, I. G. A. D. S., & Sudarsana, I. K. S. (2019). Kepastian Hukum Sertifikat Hak Milik Atas Tanah Sebagai Bukti Kepemilikan Bidang Tanah. *Jurnal Hukum*, V(5), 1–6.
- 13) Qian, C., Antonides, G., Heerink, N., Zhu, X., & Ma, X. (2022). An economic-psychological perspective on perceived land tenure security: Evidence from rural eastern China. *Land Use Policy*, 120(6), 106294. <https://doi.org/10.1016/j.landusepol.2022.106294>
- 14) Rahmawan, I. (2005). *Kamus Istilah Akuntansi Syariah*. Pilar Media.
- 15) Van Gelder, J. L. (2010). What tenure security? The case for a tripartite view. *Land Use Policy*, 27(2), 449–456.
- 16) Widiadnyani, I. G. A. (2023). Penerapan Sistem Pemanfaatan dan Penggunaan Tanah Dalam Perspektif Hukum Investasi Berwawasan Lingkungan Untuk Kemakmuran Rakyat. *Journal Law and Government*, 1(1), 72–87. <http://repository.warmadewa.ac.id/id/eprint/434/>